

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring unpatented lode mining claims CMC 215394, CMC 215396 through CMC 215398, CMC 215400, CMC 215403, CMC 215404, CMC 215406, CMC 215410, CMC 215412, CMC 215419, CMC 215422, CMC 215423, CMC 215425, and unpatented placer claim CMC 215431 null and void ab initio because they had been located on lands withdrawn from mineral entry at the time of location.

Affirmed in part and reversed in part.

1. Administrative Authority: Generally--Bureau of Reclamation: Generally--Mining Claims: Lands Subject To--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally--Withdrawals and Reservations: Reclamation Withdrawals

When lands are withdrawn from entry under some or all of the public land laws, the withdrawal remains in effect until there is a formal revocation or modification of the withdrawal. In this case, the transfer of administrative jurisdiction of previously withdrawn lands from the Department of the Interior to the Department of Agriculture pursuant to the authority granted by 16 U.S.C. § 460j-18(c) (1982) cannot be construed as a formal revocation or modification of the withdrawal opening the lands to mineral entry. The Department of the Interior retained jurisdiction to the extent necessary for the operation of the reclamation project and other reclamation purposes.

2. Mining Claims: Generally--Mining Claims: Lands Subject To--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect Of

If any part of a lode mining claim is located on lands open to mineral entry, it cannot be deemed null and void ab initio because a portion of the claim is also on withdrawn lands.

APPEARANCES: James N. McDaniel, Pueblo, Colorado, pro se.

## OPINION BY ADMINISTRATIVE JUDGE MULLEN

James N. McDaniel appeals from a February 27, 1987, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring unpatented lode mining claims CMC 215394, CMC 215396 through CMC 215398, CMC 215400, CMC 215403, CMC 215404, CMC 215406, CMC 215410, CMC 215412, CMC 215419, CMC 215422, CMC 215423, CMC 215425 and unpatented placer claim CMC 215431 null and void ab initio because the claims were entirely within lands withdrawn from mineral entry.

The placer claim was located in March 1986, and the lode mining claims were located in May 1986. These claims are a portion of a larger group of claims located by appellant in the general area, many of which appear to have been located on lands open to mineral entry.

The first issue presented on appeal is whether the transfer of jurisdiction over certain previously withdrawn lands rescinded the withdrawal. The case involves two withdrawals. In Public Land Order No. (PLO) 3359, certain lands were withdrawn from mineral entry on April 2, 1964. 1/ On December 2, 1964, additional lands were withdrawn by PLO 3478. 2/ The lands described in these PLO's were withdrawn and reserved for use by the Bureau of Reclamation in connection with the Green Mountain afterbay and dam of the Colorado-Big Thompson Project.

On February 5, 1976, an order transferring administrative jurisdiction over certain of the lands described in PLO 3359 and PLO 3478 was published in the Federal Register (41 FR 5331). This order transferred administrative jurisdiction of the lands from the Department of the Interior to the U.S. Forest Service (Forest Service), an agency of the Department of Agriculture. This transfer was made pursuant to authority granted by 16 U.S.C. § 4601-18(c) (1982), which provides, in part: "The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes \* \* \*." Appellant argues that the lands at issue had been withdrawn and reserved for use by the Bureau of Reclamation, and the transfer of jurisdiction superseded the withdrawal as to all lands transferred to the Forest Service. He contends that this transfer was clear indication that the Bureau of Reclamation no longer had an immediate need

1/ See 29 FR 4912 (Apr. 8, 1964). The PLO 3359 withdrawal included lot 4, SW<sup>^</sup>NW<sup>^</sup>, and E\SW<sup>^</sup> sec. 3, and SW<sup>^</sup>NE<sup>^</sup>, NW<sup>^</sup>NW<sup>^</sup>, S\NW<sup>^</sup>, N\SW<sup>^</sup>, SE<sup>^</sup>SW<sup>^</sup>, and W\SE<sup>^</sup> sec. 10, T. 2 S., R. 80 W., sixth principal meridian. Based on appellant's plats of CMC 215394, CMC 215398, CMC 215400, CMC 215403, CMC 215404, CMC 215410, CMC 215412, CMC 215419, CMC 215423, and CMC 215431, attached as a part of the notices of location, these claims appear to lie entirely within the lands withdrawn by PLO 3359.

2/ See 29 FR 16827 (Dec. 8, 1964). The PLO 3478 withdrawal included the W\SW<sup>^</sup> sec. 3, T. 2 S., R. 80 W., sixth principal meridian. Appellant's claims CMC 215397 and CMC 215422 appear to be entirely within the lands withdrawn by PLO 3478.

for the lands, but the Forest Service did. On the basis of this conclusion, appellant argues that upon transfer the purpose for the withdrawal was extinguished and the lands were automatically opened to mineral entry.

[1] When lands are withdrawn from entry under some or all of the public land laws, the withdrawal remains in effect until there is a formal revocation or modification of the withdrawal. The accomplishment of the avowed purpose for the withdrawal cannot be substituted for formal restoration. Harry J. Ayala, 99 IBLA 19 (1987); Tenneco Oil Co., 8 IBLA 282 (1972). Initially, we note that the authority to withdraw land from mineral entry is, by statute, vested in the Secretary of the Interior. 43 U.S.C. | 714(a) (1982). Indeed, the Secretary retains the authority to modify or revoke existing withdrawals in lands under the administration of agencies other than the Department of the Interior, subject to the consent of that agency. 43 U.S.C. | 1714(i) (1982). Thus, the mere fact that administrative jurisdiction of land is transferred from the Department of the Interior to another agency has no necessary impact on any withdrawal then in existence. Therefore, we must examine the February 5, 1976, order transferring administrative jurisdiction over the lands described in PLO 3359 and PLO 3478 to determine if that order revoked or modified the withdrawal and opened the land to mineral entry.

There can be no doubt that the February 5, 1976, order modified the two PLO's. The PLO's designated BLM as the manager of the lands until such time as they were needed for project works or reclamation purposes. The February 1976 order transferred administrative jurisdiction to the Forest Service. However, that order specifically provided that all lands "needed or used for the operation of the project or other reclamation purposes shall continue to be administered by the Commissioner of Reclamation to the extent he determines it to be necessary for such operation." 41 FR 5330, 5331. Thus, the actual effect of the transfer of administrative jurisdiction was to transfer the "interim" jurisdiction over the lands from BLM to the Forest Service. This transfer of administrative jurisdiction cannot be construed as a formal revocation or modification of the withdrawal which opened the lands to mineral entry. The lands remained closed to mineral entry on the date appellant located his mining claims, and for those claims entirely within the withdrawn lands, the BLM decision is affirmed. <sup>3/</sup>

[2] Although we affirm BLM's February 27, 1987, decision for most of the claims, the record discloses an error in that determination with respect to unpatented lode mining claims CMC 215396, CMC 215406, and CMC 215425. The maps of those claims, which are a part of the notices of location filed with BLM pursuant to 43 U.S.C. | 1744(a) (1982), indicate that a portion of those claims lie in sec. 15, T. 2 S., R. 80 W., sixth principal meridian.

<sup>3/</sup> As previously noted in footnotes 1 and 2, the claims entirely within withdrawn lands are CMC 215394, CMC 215397, CMC 215398, CMC 215400, CMC 215403, CMC 215404, CMC 215410, CMC 215412, CMC 215419, CMC 215422, CMC 215423, and CMC 215431.

On March 5, 1942, the E\NE^ and NW^NE^ of that section were opened to mineral entry pursuant to the provisions of 43 U.S.C. | 154 (1982). 4/

A mining claim is not null and void ab initio if any portion of that claim includes lands open to mineral entry. 5/ Zula C. Brinkerhoff, 75 IBLA 179 (1983). Therefore, for the three lode mining claims located partially on land open to mineral entry, the BLM decision must be reversed.

We must note, however, that the rights acquired by location of these claims are subject to prior existing rights and restrictions. As noted in Santa Fe Mining, Inc., 79 IBLA 48 (1984), the rights acquired by such locations are very limited, and appellant is advised that no mining activity should be conducted on that portion of the claims lying within the withdrawn lands.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

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R. W. Mullen  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

4/ The maps submitted with the case file are not sufficiently accurate for us to make an accurate determination whether CMC 215396 lies in part within this reopened land. The other two claims clearly do. The order opening these lands imposes additional requirements which a claimant must meet prior to conducting any operations on the land. Appellant was furnished a copy of those requirements with a Mar. 4, 1987, decision not involving claims subject to this appeal.

5/ In certain limited circumstances lode mining claims can also be technically valid with respect to conflicting claims within their exterior boundaries. However, a placer mining claim is null and void to the extent it includes land not open to mineral entry. Merrill G. Memmott, 100 IBLA 44 (1987).